

AMENDED IN SENATE AUGUST 10, 2016

AMENDED IN SENATE AUGUST 1, 2016

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY APRIL 13, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2536**

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**Introduced by Assembly Member Chau**

February 19, 2016

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An act to amend Sections 234.2 and 48900 of the Education Code, relating to elementary and secondary education.

### **LEGISLATIVE COUNSEL’S DIGEST**

AB 2536, as amended, Chau. Pupil discipline and safety: cyber sexual bullying.

(1) Existing law prohibits the suspension of a pupil from school or the recommendation of a pupil for expulsion from school unless the school district superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has committed any of several specified acts, including, but not limited to, engaging in acts of bullying by means of an electronic act.

This bill would include engaging in an act of cyber sexual bullying, as defined, as an act of bullying by means of an electronic act for which a pupil may be suspended or expelled from school.

(2) Existing law requires the State Department of Education to display current information, and periodically update information, on curricula

and other resources that specifically address bias-related discrimination, harassment, intimidation, and bullying based on certain actual or perceived characteristics on the California Healthy Kids Resource Center Internet Web site and other appropriate department Internet Web sites where information about discrimination, harassment, intimidation, and bullying is posted.

This bill would add cyber sexual bullying to this list of topics on which the department would be required to provide information. The bill would require the department to annually inform school districts of the information on the California Healthy Kids Resource Center Internet Web site and other appropriate department Internet Web sites where information about cyber sexual bullying is posted. The bill would encourage school districts to inform pupils regarding the available information and resources on the department's Internet Web sites regarding the dangers and consequences of cyber sexual bullying to help reduce the instances of cyber sexual bullying.

*(3) This bill would incorporate additional changes to Section 48900 of the Education Code proposed by AB 2212 that would become operative if this bill and AB 2212 are both enacted and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 234.2 of the Education Code is amended  
2 to read:  
3 234.2. (a) The department shall display current information,  
4 and periodically update information, on curricula and other  
5 resources that specifically address bias-related discrimination,  
6 harassment, intimidation, cyber sexual bullying, as defined in  
7 Section 48900, and bullying based on any of the actual or perceived  
8 characteristics set forth in Section 422.55 of the Penal Code and  
9 Section 220 on the California Healthy Kids Resource Center  
10 Internet Web site and other appropriate department Internet Web  
11 sites where information about discrimination, harassment,  
12 intimidation, cyber sexual bullying, and bullying is posted.  
13 (b) The department shall annually inform school districts of the  
14 information on the California Healthy Kids Resource Center  
15 Internet Web site and other appropriate department Internet Web

1 sites where information about cyber sexual bullying is posted  
2 pursuant to subdivision (a). The department may use electronic  
3 mail to inform school districts of this information.

4 (c) School districts are encouraged to inform pupils regarding  
5 the available information and resources on the department's  
6 Internet Web sites regarding the dangers and consequences of  
7 cyber sexual bullying to help reduce the instances of cyber sexual  
8 bullying.

9 SEC. 2. Section 48900 of the Education Code is amended to  
10 read:

11 48900. A pupil shall not be suspended from school or  
12 recommended for expulsion, unless the superintendent of the school  
13 district or the principal of the school in which the pupil is enrolled  
14 determines that the pupil has committed an act as defined pursuant  
15 to any of subdivisions (a) to (r), inclusive:

16 (a) (1) Caused, attempted to cause, or threatened to cause  
17 physical injury to another person.

18 (2) Willfully used force or violence upon the person of another,  
19 except in self-defense.

20 (b) Possessed, sold, or otherwise furnished a firearm, knife,  
21 explosive, or other dangerous object, unless, in the case of  
22 possession of an object of this type, the pupil had obtained written  
23 permission to possess the item from a certificated school employee,  
24 which is concurred in by the principal or the designee of the  
25 principal.

26 (c) Unlawfully possessed, used, sold, or otherwise furnished,  
27 or been under the influence of, a controlled substance listed in  
28 Chapter 2 (commencing with Section 11053) of Division 10 of the  
29 Health and Safety Code, an alcoholic beverage, or an intoxicant  
30 of any kind.

31 (d) Unlawfully offered, arranged, or negotiated to sell a  
32 controlled substance listed in Chapter 2 (commencing with Section  
33 11053) of Division 10 of the Health and Safety Code, an alcoholic  
34 beverage, or an intoxicant of any kind, and either sold, delivered,  
35 or otherwise furnished to a person another liquid, substance, or  
36 material and represented the liquid, substance, or material as a  
37 controlled substance, alcoholic beverage, or intoxicant.

38 (e) Committed or attempted to commit robbery or extortion.

39 (f) Caused or attempted to cause damage to school property or  
40 private property.

1 (g) Stole or attempted to steal school property or private  
2 property.

3 (h) Possessed or used tobacco, or products containing tobacco  
4 or nicotine products, including, but not limited to, cigarettes, cigars,  
5 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew  
6 packets, and betel. However, this section does not prohibit the use  
7 or possession by a pupil of his or her own prescription products.

8 (i) Committed an obscene act or engaged in habitual profanity  
9 or vulgarity.

10 (j) Unlawfully possessed or unlawfully offered, arranged, or  
11 negotiated to sell drug paraphernalia, as defined in Section 11014.5  
12 of the Health and Safety Code.

13 (k) (1) Disrupted school activities or otherwise willfully defied  
14 the valid authority of supervisors, teachers, administrators, school  
15 officials, or other school personnel engaged in the performance of  
16 their duties.

17 (2) Except as provided in Section 48910, a pupil enrolled in  
18 kindergarten or any of grades 1 to 3, inclusive, shall not be  
19 suspended for any of the acts enumerated in this subdivision, and  
20 this subdivision shall not constitute grounds for a pupil enrolled  
21 in kindergarten or any of grades 1 to 12, inclusive, to be  
22 recommended for expulsion. This paragraph shall become  
23 inoperative on July 1, 2018, unless a later enacted statute that  
24 becomes operative before July 1, 2018, deletes or extends that  
25 date.

26 (l) Knowingly received stolen school property or private  
27 property.

28 (m) Possessed an imitation firearm. As used in this section,  
29 “imitation firearm” means a replica of a firearm that is so  
30 substantially similar in physical properties to an existing firearm  
31 as to lead a reasonable person to conclude that the replica is a  
32 firearm.

33 (n) Committed or attempted to commit a sexual assault as  
34 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal  
35 Code or committed a sexual battery as defined in Section 243.4  
36 of the Penal Code.

37 (o) Harassed, threatened, or intimidated a pupil who is a  
38 complaining witness or a witness in a school disciplinary  
39 proceeding for purposes of either preventing that pupil from being

1 a witness or retaliating against that pupil for being a witness, or  
2 both.

3 (p) Unlawfully offered, arranged to sell, negotiated to sell, or  
4 sold the prescription drug Soma.

5 (q) Engaged in, or attempted to engage in, hazing. For purposes  
6 of this subdivision, “hazing” means a method of initiation or  
7 preinitiation into a pupil organization or body, whether or not the  
8 organization or body is officially recognized by an educational  
9 institution, that is likely to cause serious bodily injury or personal  
10 degradation or disgrace resulting in physical or mental harm to a  
11 former, current, or prospective pupil. For purposes of this  
12 subdivision, “hazing” does not include athletic events or  
13 school-sanctioned events.

14 (r) Engaged in an act of bullying. For purposes of this  
15 subdivision, the following terms have the following meanings:

16 (1) “Bullying” means any severe or pervasive physical or verbal  
17 act or conduct, including communications made in writing or by  
18 means of an electronic act, and including one or more acts  
19 committed by a pupil or group of pupils as defined in Section  
20 48900.2, 48900.3, or 48900.4, directed toward one or more pupils  
21 that has or can be reasonably predicted to have the effect of one  
22 or more of the following:

23 (A) Placing a reasonable pupil or pupils in fear of harm to that  
24 pupil’s or those pupils’ person or property.

25 (B) Causing a reasonable pupil to experience a substantially  
26 detrimental effect on his or her physical or mental health.

27 (C) Causing a reasonable pupil to experience substantial  
28 interference with his or her academic performance.

29 (D) Causing a reasonable pupil to experience substantial  
30 interference with his or her ability to participate in or benefit from  
31 the services, activities, or privileges provided by a school.

32 (2) (A) “Electronic act” means the creation or transmission  
33 originated on or off the schoolsite, by means of an electronic  
34 device, including, but not limited to, a telephone, wireless  
35 telephone, or other wireless communication device, computer, or  
36 pager, of a communication, including, but not limited to, any of  
37 the following:

38 (i) A message, text, sound, or image.

39 (ii) A post on a social network Internet Web site, including, but  
40 not limited to:

1 (I) Posting to or creating a burn page. “Burn page” means an  
2 Internet Web site created for the purpose of having one or more  
3 of the effects listed in paragraph (1).

4 (II) Creating a credible impersonation of another actual pupil  
5 for the purpose of having one or more of the effects listed in  
6 paragraph (1). “Credible impersonation” means to knowingly and  
7 without consent impersonate a pupil for the purpose of bullying  
8 the pupil and such that another pupil would reasonably believe, or  
9 has reasonably believed, that the pupil was or is the pupil who was  
10 impersonated.

11 (III) Creating a false profile for the purpose of having one or  
12 more of the effects listed in paragraph (1). “False profile” means  
13 a profile of a fictitious pupil or a profile using the likeness or  
14 attributes of an actual pupil other than the pupil who created the  
15 false profile.

16 (iii) An act of cyber sexual bullying.

17 (I) For purposes of this clause, “cyber sexual bullying” means  
18 the dissemination of, or the solicitation or incitement to  
19 disseminate, a photograph or other visual recording by a pupil to  
20 another pupil or to school personnel by means of an electronic act  
21 ~~with the purpose or effect of humiliating or harassing a pupil. that~~  
22 *has or can be reasonably predicted to have one or more of the*  
23 *effects described in subparagraphs (A) to (D), inclusive, of*  
24 *paragraph (1).* A photograph or other visual recording, as described  
25 above, shall include the depiction of a nude, semi-nude, or sexually  
26 explicit photograph or other visual recording of a minor where the  
27 minor is identifiable from the photograph, visual recording, or  
28 other electronic act.

29 (II) For purposes of this clause, “cyber sexual bullying” does  
30 not include a depiction, portrayal, or image that has any serious  
31 literary, artistic, educational, political, or scientific value or that  
32 involves athletic events or school-sanctioned activities.

33 (B) Notwithstanding paragraph (1) and subparagraph (A), an  
34 electronic act shall not constitute pervasive conduct solely on the  
35 basis that it has been transmitted on the Internet or is currently  
36 posted on the Internet.

37 (3) “Reasonable pupil” means a pupil, including, but not limited  
38 to, an exceptional needs pupil, who exercises average care, skill,  
39 and judgment in conduct for a person of his or her age, or for a  
40 person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, "school property" includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil's specific misbehavior as specified in Section 48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

*SEC. 2.5. Section 48900 of the Education Code is amended to read:*

48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:

- (a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.

(2) Willfully used force or violence upon the person of another, except in self-defense.

(b) Possessed, sold, or otherwise furnished a firearm, knife, explosive, or other dangerous object, unless, in the case of possession of an object of this type, the pupil had obtained written permission to possess the item from a certificated school employee, which is concurred in by the principal or the designee of the principal.

(c) Unlawfully possessed, used, sold, or otherwise furnished, or been under the influence of, a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind.

(d) Unlawfully offered, arranged, or negotiated to sell a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, an alcoholic beverage, or an intoxicant of any kind, and either sold, delivered, or otherwise furnished to a person another liquid, substance, or material and represented the liquid, substance, or material as a controlled substance, alcoholic beverage, or intoxicant.

(e) Committed or attempted to commit robbery or extortion.

(f) Caused or attempted to cause damage to school property or private property.

(g) Stole or attempted to steal school property or private property.

(h) Possessed or used tobacco, or products containing tobacco or nicotine products, including, but not limited to, cigarettes, cigars, miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew packets, and betel. However, this section does not prohibit the use or possession by a pupil of his or her own prescription products.

(i) Committed an obscene act or engaged in habitual profanity or vulgarity.

(j) Unlawfully possessed or unlawfully offered, arranged, or negotiated to sell drug paraphernalia, as defined in Section 11014.5 of the Health and Safety Code.

(k) (1) Disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.



(2) Except as provided in Section 48910, a pupil enrolled in kindergarten or any of grades 1 to 3, inclusive, shall not be suspended for any of the acts enumerated in this subdivision, and this subdivision shall not constitute grounds for a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, to be recommended for expulsion. This paragraph shall become inoperative on July 1, 2018, unless a later enacted statute that becomes operative before July 1, 2018, deletes or extends that date.

(l) Knowingly received stolen school property or private property.

(m) Possessed an imitation firearm. As used in this section, “imitation firearm” means a replica of a firearm that is so substantially similar in physical properties to an existing firearm as to lead a reasonable person to conclude that the replica is a firearm.

(n) Committed or attempted to commit a sexual assault as defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal Code or committed a sexual battery as defined in Section 243.4 of the Penal Code.

(o) Harassed, threatened, or intimidated a pupil who is a complaining witness or a witness in a school disciplinary proceeding for purposes of either preventing that pupil from being a witness or retaliating against that pupil for being a witness, or both.

(p) Unlawfully offered, arranged to sell, negotiated to sell, or sold the prescription drug Soma.

(q) Engaged in, or attempted to engage in, hazing. For purposes of this subdivision, “hazing” means a method of initiation or preinitiation into a pupil organization or body, whether or not the organization or body is officially recognized by an educational institution, that is likely to cause serious bodily injury or personal degradation or disgrace resulting in physical or mental harm to a former, current, or prospective pupil. For purposes of this subdivision, “hazing” does not include athletic events or school-sanctioned events.

(r) Engaged in an act of bullying. For purposes of this subdivision, the following terms have the following meanings:

(1) “Bullying” means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by

1 means of an electronic act, and including one or more acts  
2 committed by a pupil or group of pupils as defined in Section  
3 48900.2, 48900.3, or 48900.4, directed toward one or more pupils  
4 that has or can be reasonably predicted to have the effect of one  
5 or more of the following:

6 (A) Placing a reasonable pupil or pupils in fear of harm to that  
7 pupil's or those pupils' person or property.

8 (B) Causing a reasonable pupil to experience a substantially  
9 detrimental effect on his or her physical or mental health.

10 (C) Causing a reasonable pupil to experience substantial  
11 interference with his or her academic performance.

12 (D) Causing a reasonable pupil to experience substantial  
13 interference with his or her ability to participate in or benefit from  
14 the services, activities, or privileges provided by a school.

15 (2) (A) "Electronic act" means the creation or transmission  
16 originated on or off the schoolsite, by means of an electronic  
17 device, including, but not limited to, a telephone, wireless  
18 telephone, or other wireless communication device, computer, or  
19 pager, of a communication, including, but not limited to, any of  
20 the following:

21 (i) A message, text, sound, *video*, or image.

22 (ii) A post on a social network Internet Web site, including, but  
23 not limited to:

24 (I) Posting to or creating a burn page. "Burn page" means an  
25 Internet Web site created for the purpose of having one or more  
26 of the effects listed in paragraph (1).

27 (II) Creating a credible impersonation of another actual pupil  
28 for the purpose of having one or more of the effects listed in  
29 paragraph (1). "Credible impersonation" means to knowingly and  
30 without consent impersonate a pupil for the purpose of bullying  
31 the pupil and such that another pupil would reasonably believe, or  
32 has reasonably believed, that the pupil was or is the pupil who was  
33 impersonated.

34 (III) Creating a false profile for the purpose of having one or  
35 more of the effects listed in paragraph (1). "False profile" means  
36 a profile of a fictitious pupil or a profile using the likeness or  
37 attributes of an actual pupil other than the pupil who created the  
38 false profile.

39 (iii) *An act of cyber sexual bullying.*

(I) For purposes of this clause, “cyber sexual bullying” means the dissemination of, or the solicitation or incitement to disseminate, a photograph or other visual recording by a pupil to another pupil or to school personnel by means of an electronic act that has or can be reasonably predicted to have one or more of the effects described in subparagraphs (A) to (D), inclusive, of paragraph (1). A photograph or other visual recording, as described above, shall include the depiction of a nude, semi-nude, or sexually explicit photograph or other visual recording of a minor where the minor is identifiable from the photograph, visual recording, or other electronic act.

(II) For purposes of this clause, “cyber sexual bullying” does not include a depiction, portrayal, or image that has any serious literary, artistic, educational, political, or scientific value or that involves athletic events or school-sanctioned activities.

(B) Notwithstanding paragraph (1) and subparagraph (A), an electronic act shall not constitute pervasive conduct solely on the basis that it has been transmitted on the Internet or is currently posted on the Internet.

(3) “Reasonable pupil” means a pupil, including, but not limited to, an exceptional needs pupil, who exercises average care, skill, and judgment in conduct for a person of his or her age, or for a person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

(1) While on school grounds.

(2) While going to or coming from school.

(3) During the lunch period whether on or off the campus.

(4) During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged

1 by a juvenile court to have committed, as an aider and abettor, a  
2 crime of physical violence in which the victim suffered great bodily  
3 injury or serious bodily injury shall be subject to discipline pursuant  
4 to subdivision (a).

5 (u) As used in this section, “school property” includes, but is  
6 not limited to, electronic files and databases.

7 (v) For a pupil subject to discipline under this section, a  
8 superintendent of the school district or principal may use his or  
9 her discretion to provide alternatives to suspension or expulsion  
10 that are age appropriate and designed to address and correct the  
11 pupil’s specific misbehavior as specified in Section 48900.5.

12 (w) It is the intent of the Legislature that alternatives to  
13 suspension or expulsion be imposed against a pupil who is truant,  
14 tardy, or otherwise absent from school activities.

15 *SEC. 3. Section 2.5 of this bill incorporates amendments to*  
16 *Section 48900 of the Education Code proposed by both this bill*  
17 *and Assembly Bill 2212. It shall only become operative if (1) both*  
18 *bills are enacted and become effective on or before January 1,*  
19 *2017, (2) each bill amends Section 48900 of the Education Code,*  
20 *and (3) this bill is enacted after Assembly Bill 2212, in which case*  
21 *Section 2 of this bill shall not become operative.*